

REMARKS

Claims 43-74 are pending in the present application.

Claims 1-42 have been previously canceled without *prejudice*.

Claims 43-48, 50, 59-64, and 66 stand rejected under 35 U.S.C. § 103(a) over EP 425,405 A2 to James et al. ("*James*") in view of U.S. Patent No. 5,459,656 to Fields et al. ("*Fields*") and "The keys to the enterprise: integrated applications drive information systems to new horizons – enterprise wide integration" to Dusty Rhodes ("*Rhodes*") and in further view of U.S. Patent No. 5,727,164 to Kaye et al. ("*Kaye*").

Claims 49, 51-58, 65, 67-69, and 71-74 stands rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields*, *Rhodes* and *Kaye* and in further view of "Dun & Bradstreet Software Delivers Sales and Promotion System to Manufacturers" to Frank O. Smith ("*Smith*").

Applicant notes with thanks the Examiner's response of February 2, 2011.

Applicant respectfully submits that all of Applicant's arguments are without *prejudice* or *disclaimer*. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner's rejections.

I. Rejections under 35 U.S.C. § 103(a):

Claims 43-48, 50, 59-64, and 66 stand rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields* and *Rhodes* and *Kaye* in further view of *Rhodes*. Claims 49, 51-58, 65, 67-69, and 71-74 stand rejected under 35 U.S.C. § 103(a) over *James* in view of *Fields*, *Rhodes* and *Kaye* and in further view of *Smith*.

Applicant respectfully submits that Claims 43-74 in their current form contain unique and novel limitations that are not taught, suggested, or even hinted at in *James, Fields, Rhodes, Kaye* or *Smith*, either individually or in combination. Thus, Applicant respectfully traverses the Examiners obvious rejection of Claims 43-74 under 35 U.S.C. § 103(a) over the proposed combination of *James, Fields, Rhodes, Kaye* or *Smith*, either individually or in combination.

a. The Office Action Also Acknowledges that *James, Fields* and *Rhodes* Fail to Disclose Various Limitations Recited in Applicant's Claims

In rejecting Claim 43, the Examiner states the following:

The above references [*James, Fields* and *Rhodes*] do not teach the following feature which is taught or illustrated by *Kaye* (Col. 3, Ln. 50-Col. 4, Ln. 10):

(wherein each seller model represents a seller of one or more products) within a hierarchy of sellers and within a seller organization.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of *Rhodes* in view of *James* in view of *Fields* with the *motivation of having a means of having a means of forming a family of sub organizations which maintain and manage a common, universal inventory that can be converted into local inventories*, as implied by *Kaye* (Col. 3, Ln. 50-67).

(Emphasis added). Applicant respectfully disagrees with the Examiner's assertions and respectfully submits that *Kaye* does not disclose, among other things "*having a means of having a means of forming a family of sub organizations which maintain and manage a common, universal inventory that can be converted into local inventories*," as asserted by the Examiner or even "*a hierarchy of seller models, each seller model representing a seller of one or more products within a hierarchy of sellers and within a seller organization*," as required by Claim 43.

By contrast, *Kaye* merely provides for "local on-site computer storage of both a local inventory and many other offsite network members' inventories." (*Kaye*, Col. 3, Ln. 53-55). A network manager program is provided, which "keeps track of network members" and "permits a network manager to edit the family/subfamily master list which is used by all users when selecting local and offsite inventory databases" (see *Kaye* Col. 9, Ln 14-20). Thus, the network manager of

Kaye, merely provides a control for the naming and identifying of the family/subfamily master list in order to provide uniformity in such naming and identification among network members.

There is simply no “common, universal inventory” taught, suggested or even hinted at in *Kaye*. Instead, *Kaye* merely provides a system for collaterally connecting local and offsite inventory databases. *Kaye* does not expressly or inherently perform this by generating a massive universal database. Instead, a local user may have interest in a subset of products offered by one or more offsite users. The *Kaye* system merely allows the local user to select “those families/subfamilies that the local user is interested in receiving from the many offsite databases that have been selected from the network” (*Kaye* Col. 7, Ln. 17-19). In addition, a local user may elect to receive inventory information about a first family of products from a first offsite user, while electing to receive a second family of products from a second offsite user. The system of *Kaye* merely takes these selections and queues up communication requests (via modem operation) to occur on specific days or times or with the frequency that the user specifies. *Kaye* actually teaches away from the limitations of Claim 43. For example, it would be contrary to the teaching of *Kaye* to continuously update the entire inventory databases of every other offsite user on the network, as would be required to even approach the idea of a “common, universal inventory,” as suggested by the Examiner.

Applicant respectfully submits that motivation for a “common, universal inventory that can be converted into local inventories,” as asserted by the Examiner, is not taught, suggested, or even hinted at in *Kaye*, where the objective is simply to provide a uniform inventory format for communicating *particular parts of other users’ inventories to a local user*, “based on a [local user’s] **particular** search criteria” (Col. 4, Ln. 13-14) (emphasis added).

In fact, contrary to the Examiner’s assertions, *Kaye* not only fails to provide motivation for “**having a means of having a means of forming a family of sub organizations which maintain and manage a common, universal inventory that can be converted into local inventories,**” but also fails to do so “within a hierarchy of sellers and within a seller organization.” Furthermore, the collateral communication between local and offsite users taught by *Kaye* is not equivalent with the hierarchy as recited in Applicant’s claims. *Kaye* is silent and therefore, fails to disclose hierarchical levels of sellers and, for at least the reasons described herein, no motivation exists to apply the

limitations with respect to a seller within a hierarchy of sellers and within a seller organization to the other limitations of claim 43, as asserted by the Examiner.

Accordingly, Applicant respectfully requests that the rejection of Applicant's claims as obvious over the proposed combination of *James, Fields, Rhodes, Kaye* and *Smith* be withdrawn.

b. The Office Action Also Acknowledges that *James* and *Fields* Fail to Disclose Other Limitations Recited in Applicant's Claims

In rejecting Claim 43, the Examiner further states the following:

James does not explicitly disclose *pre-allocated supply of the product to each seller and the system operable to compute the amount of the product that is ATP at each seller according to the planned supply, the customer orders, the pre-allocated supply, a hierarchy of seller models, and the amount of the product that is ATP at one or more other sellers at a higher level in a seller hierarchy.*

However, Rhodes discloses pre-allocated supply of the product to each seller (i.e. plan sales expectations)(pages 4 and 5 of the NPL document Rhodes) and the system operable to compute the amount of the product that is ATP at each seller according to the planned supply, the customer orders, the pre-allocated supply and the amount of the product that is ATP at one or more other sellers (i.e. linking sales and marketing strategies to material and resource scheduling ...)(page 3-Image version of document).

(February 25, 2011 Final Office Action, pages 3-4). (Emphasis added). Applicant again notes that the Examiner relies on pages 4 and 5 of the NPL document of Rhodes, however, the NPL document of Rhodes only contains 4 pages, for the purpose of this response, Applicant assumes the Examiner means pages 3 and 4 of Rhodes, appropriate correction is requested.

Applicant thanks the Examiner for noting that *James* (and by silence *Fields* – although, Applicant notes that the Examiner states that *Fields* fails to disclose this limitations at page 14 of the present Office Action) fail to disclose “pre-allocated supply of the product to each seller, the pre-allocated supply is *a supply of the product pre-allocated to each seller to promise to subsequent customer orders for the product through each seller.*”

However, Applicant respectfully disagrees with the Examiner's assertion that *Rhodes* provides these missing elements and in fact, respectfully submits that *Rhodes* fails to disclose at

least Claim 43 limitations of a “*product forecast model*” representing “*pre-allocated supply of the product to each seller*, the pre-allocated supply is *a supply of the product pre-allocated to each seller to promise to subsequent customer orders for the product through each seller*,” “*comput[ing] the amount of the product that is ATP at a seller according to at least the planned supply of the product*, the customer orders for the product through each seller, the pre-allocated supply of the product to each seller, and the amount of the product that is ATP at one or more other sellers in the *hierarchy of sellers within the seller organization*,” and “*adjust[ing] the pre-allocated supply of the product to each seller according to customer orders across a time horizon and recomput[ing] the amount of the product that is ATP at each seller according to the adjusted pre-allocated supply*.”

The Examiner further states the following:

As per the recitation of “the pre-allocation of the supply of the product to the seller occurring prior to distribution of the pre-allocated supply of the product to the seller,” the Examiner respectfully submits that Rhodes discloses an order department being able to “look” into the manufacturing system to determine what is currently in production to give a viable ATP date (page 2). It is noted that a product must be allocated to a seller before it is distributed to the seller. For example, a customer placing an order for a product and being told when it will be delivered has “allocated” the product for himself (See also Applicant's Background of the Invention, page 2, lines 15-26). The product is then delivered to the customer (“distributed”) after an order has been placed (See also Applicant's Background of the Invention, page 2, lines 15-26).

(February 25, 2011 Final Office Action, page 4). (Emphasis added). Applicant respectfully disagrees with the Examiner's assertions and respectfully directs the Examiner's attention to page 2 of *Rhodes*, provided below, on which the Examiner relies:

In an integrated SOP environment, both forecasting and DRP are used to drive purchasing and the master production schedule (MPS) in manufacturing. MPS linked with order management closes the information loop such that *when a customer calls to place an order*, the order department can “look” into the manufacturing system to determine what's *currently in production* to give viable available-to-promise dates. Accurate historical data on customer orders in order management also gets fed back into the forecasting system, where the process starts all over again.

(Emphasis added). By contrast, as shown above, *Rhodes* merely discloses, among other things, that “*when a customer calls to place an order*, the order department can “look” into the

manufacturing system to determine what's currently in production." Rhodes is silent and therefore fails to disclose a "*product forecast model*" representing "*pre-allocated supply of the product to each seller*, the pre-allocated supply is a supply of the product pre-allocated to each seller to promise to subsequent customer orders for the product through each seller," as required by Claim 43. In fact, as shown above, the disclosure of the portions of Rhodes relied upon by the Examiner is directed toward determining "*what's currently in production*" "*when a customer calls to place an order*." That is, *determining what's currently in production* in response to *a customer calling to place an order* as disclosed in Rhodes does not equate to a supply of the product pre-allocated to each seller of the hierarchy of sellers prior to receiving customer orders, as required by Claim 43.

In fact, Rhodes does not even disclose that it looks into the manufacturing system, but instead merely states that it can look into the manufacturing system to determine what's currently in production. What Rhodes calls looking into the manufacturing system is simply an abstraction that describes an indefinite function of a possible action, which "can" be performed by some undefined component "order department" of the Rhodes system. The "order department" is essentially a black box that "can" perform a possible action. But whether it does or how it does so is left undisclosed.

The Examiner further states the following:

As per the recitation of "a hierarchy of seller models" [...] Rhodes discloses allowing business information systems to communicate with different trading partnerships, where the system encompass the flow of physical goods (and information) from the supplying organizations into the businesses and subsequently to its customers (Note: Page 6, Paragraph 5 of the (non-patent literature) (NPL) reference of *Rhodes teaches transferring goods from supplying organizations to businesses and then to customers which is a form of hierarchy*.

(February 25, 2011 Final Office Action, page 4). (Emphasis added). Applicant respectfully disagrees with the Examiner's assertions and respectfully submits that Rhodes does not disclose, among other things a "*hierarchy of seller models, each seller model representing a seller of one or more products within a hierarchy of sellers and within a seller organization*," as required by Claim 43. By contrast and as acknowledged by the Examiner "*Rhodes teaches transferring goods from supplying organizations to businesses and then to customers*" and Rhodes does not teach

“(wherein each seller model represents a seller of one or more products) within a hierarchy of sellers and within a seller organization.” Therefore, as acknowledged by the Examiner *Rhodes* fails to disclose “*each seller model representing a seller of one or more products within a hierarchy of sellers and within a seller organization*,” as required by Claim 43.

Accordingly, Applicant respectfully requests that the rejection of Applicant’s claims as obvious over the proposed combination of *James, Fields, Rhodes, Kaye* and *Smith* be withdrawn.

II. The Office Action Fails to Properly Establish a *Prima Facie* case of Obvious over the Proposed *James-Fields-Rhodes-Kaye-Smith* Combination According to the UPSTO Examination Guidelines

Applicant respectfully submits that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of *James, Fields, Rhodes, Kaye* or *Smith*, either individually or in combination, and in particular, the Office Action fails to establish a *prima facie* case of obviousness based on the “Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*” (the “Guidelines”).

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc. (KSR)*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel “**ensure that the written record includes findings of fact** concerning the state of the art and the teachings of the references applied. (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the “**factual findings made by Office personnel are the necessary underpinnings to establish obviousness.**” (*id.*). Further, “**Office personnel must provide an explanation to support an obviousness rejection** under 35 U.S.C. 103. (*id.*). In fact, “35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed” and “clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.” (*id.*).

With respect to the subject application, the Office Action has not shown the **factual findings necessary to establish obviousness** or even **an explanation to support the obviousness rejection** based on the proposed combination of *James, Fields, Rhodes, Kaye* and *Smith*. The Office Action merely states that “it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to include the teachings of Fields within the James system [and] to include the features as disclosed by Rhodes within the James and Fields combination”. (February 25, 2011 Final Office Action, pages 3-5). Applicant respectfully disagrees and respectfully submits that the Examiner’s conclusory statement is not sufficient to establish the **factual findings necessary to establish obviousness** and is not a sufficient **explanation to support the obviousness rejection** based on the proposed combination of *James, Fields, Rhodes, Kaye* and *Smith*. **Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including the factual findings necessary to establish obviousness to “ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied.** (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)).

The Guidelines further provide guidance to Office personnel in “determining the scope and content of the prior art” such as, for example, “Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application.” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” (See Phillips

v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any “*obviousness rejection should include*, either explicitly or implicitly in view of the prior art applied, *an indication of the level of ordinary skill.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided *an indication of the level of ordinary skill. Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including an indication of the level of ordinary skill, relied upon by the Examiner.* (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)).

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). For example, the Guidelines state that *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.* (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.* (*Id.* and *See* 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether Applicant’s invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the difference(s) between the proposed combination of James, Fields, Rhodes, Kaye, Smith and Applicant’s claimed invention would have been obvious to one of ordinary skill in the art.* The Office Action merely states that “in order to provide products in timely response to customer demands” and for “allowing access to relevant data, facilitating fast decision making and providing material and resource management information to sales and marketing teams.” (February 25, 2011 Final Office Action, pages 3-5). Applicant respectfully disagrees and further respectfully requests clarification as to how this statement *explains why the difference(s) between the proposed combination of James, Fields, Rhodes, Kaye, Smith and Applicant’s claimed invention would have been obvious to one of ordinary skill in the art.* Applicant further respectfully submits that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the “key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that “*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.*” (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that “[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Applicant respectfully submits that the *Office Action fails to provide any articulation, let alone, clear articulation of the reasons why Applicant's claimed invention would have been obvious.* For example, the *Examiner has not adequately supported the selection and combination of James, Fields, Rhodes, Kaye and Smith to render obvious Applicant's claimed invention.* The Examiner's unsupported conclusory statements that “it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the teachings of Fields within the James system [and] to include the features as disclosed by Rhodes within the James and Fields combination” and “in order to provide products in timely response to customer demands” and for “allowing access to relevant data, facilitating fast decision making and providing material and

resource management information to sales and marketing teams”, *does not adequately provide clear articulation of the reasons why Applicant’s claimed invention would have been obvious.* (February 25, 2011 Final Office Action, pages 3-5). In addition, the Examiner’s unsupported conclusory statement fails to meet any of the Guidelines rationales to render obvious Applicant claimed invention.

Thus, if the Examiner continues to maintain the obvious rejection based on the proposed combination of *James, Fields, Rhodes, Kaye* and *Smith*, *Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including a statement by the Examiner identifying which one of the seven rationales the Examiner is relying on and the proper analysis of that particular rationale, as required by the Guidelines.*

III. Applicant’s Claims are Patentable over the Proposed James-Fields-Rhodes-Kaye-Smith Combination

Applicant respectfully submits that Claim 43 is considered patentably distinguishable over the proposed combination of *James, Fields, Rhodes, Kaye* or *Smith*. This being the case, Claims 51, 59, and 67 are also considered patentably distinguishable over the proposed combination of *James, Fields, Rhodes, Kaye* or *Smith*, for at least the reasons discussed above in connection with Claim 43.

Furthermore, with respect to dependent Claims 44-50, 52-58, 60-66, and 68-74; Claims 44-50 depend from Claim 43; Claims 52-58 depend from Claim 51; Claims 60-66 depend from Claim 59; and Claims 68-74 depend from Claim 67. As mentioned above, each of Claims 43, 51, 59, and 67 are considered patentably distinguishable over *James, Fields, Rhodes, Kaye* or *Smith*. Thus, dependent Claims 44-50, 52-58, 60-66, and 68-74 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, Applicant respectfully submits that Claims 43-74 are not rendered obvious by the proposed combination of *James, Fields, Rhodes, Kaye* or *Smith*. Applicant further respectfully submits that Claims 43-74 are in condition for allowance. Thus, Applicant respectfully requests that the rejection of Applicant’s claims under 35 U.S.C. § 103(a) be reconsidered and that Claims 43-74 be allowed.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Respectfully submitted,

May 25, 2011
Date

/Steven J. Laureanti/signed
Steven J. Laureanti, Registration No. 50,274

BOOTH UDALL, PLC
1155 W. Rio Salado Pkwy., Ste. 101
Tempe AZ, 85281
602.573.0349 (mobile)
480.830.2700 (office)
480.830.2717 (fax)
steven@boothudall.com

CUSTOMER NO. 53184